

### ***Issues of Concern to the State:***

The State of Alaska has participated in numerous FCC rulemakings for over twenty years. Its focus, due to the State's unique telecommunications service challenges, has historically been on universal service, and rate integration and geographic rate averaging. However, as technology and public policy have evolved, so have the State's areas of regulatory and advisory involvement, as evidenced below. Currently, Lieutenant Governor Fran Ulmer is a charter member of the FCC's Local and State Government Advisory Committee. Alaska Regulatory Commission Chairman, Nan Thompson, serves on the Universal Service Joint Board. To better understand the State's issues, nearly all of the recent FCC Commissioners have spent time in Alaska to visit its rural Native communities and schools, and to meet with the Alaska telecommunications industry, public officials, and interested citizens.

- **Availability of Internet Access**

- Alaska trails every other state in broadband access, according to an August 2001 FCC report. As of year-end 2000, 25% of zip codes nationwide were not served by any broadband Internet access provider, but fully 78% of Alaska zip codes were not so served. (The next most underserved state is North Dakota at 60% of zip codes.)
- Even narrowband Internet access is a problem in most of rural Alaska. According to the State's research, about 75% of Alaskan communities lack local or toll-free dial-up (narrowband) access to the Internet.
- Possible interim solution: State's E-Rate Rule Waiver Petition.

- **Full Funding of Schools and Libraries and Rural Health Care Provider Universal Service Support Programs**

- Historically, Alaska has been one of the few States in which the largest portion of schools and libraries funds have gone to the purchase of telecommunications services rather than internal connections. This fact demonstrates the high cost of services and/or the great demand for them.
- The State has been the largest beneficiary of rural health care support funds because of the number and remoteness of rural health care facilities that lack comprehensive medical staffs.

- **Maintenance of Geographic Rate Averaging and Rate Integration**

- Congress codified and expanded upon the Commission's geographic rate averaging and rate integration requirements in enacting 47 U.S.C. § 254(g). Nonetheless, these requirements are subject to continuing attack by various carriers.
- Some have suggested that deaveraging of interstate access rates will promote achievement of rate integration and/or geographic rate averaging. In the State's view,

however, it is critically important that deaveraging of access rates not lead to deaveraged interexchange service rates.

- The application of rate integration and geographic rate averaging to CMRS remains an issue pending before the FCC.
- **Continuation of Adequate Support for Rural Telephone Companies**
  - Some areas of rural Alaska have penetration rates below 40%.
  - Without adequate support for rural telephone companies, basic service rates in Alaska would increase dramatically, as rural Alaskan telcos have per line costs that are among the very highest in the Nation. Recent FCC reports show that statewide Alaska received about \$13 per line in USF support. Excluding the Anchorage area (about half of the State's population, which receives no USF support), the amount of support would be equal to about \$26 per line. (The next largest amount of support flowing to any other State is about \$8.50 per line in Wyoming.)
- **Assuring Availability of Direct Broadcast Services (DBS)**
  - Alaska and Hawaii do not receive service comparable to the service received in other parts of the Nation. Many parts of the State do not receive service at technically acceptable levels. The programming made available in Alaska may be higher priced and/or require more expensive receive antennae than programming sold in the Continental U.S. The FCC needs to resolve pending issues related to its geographic service rules (47 C.F.R. § 100.53):
    - "Those holding DBS permits or licenses as of January 19, 1996 must either: (1) Provide DBS service to Alaska and Hawaii from one or more orbital locations before the expiration of their current authorizations; or (2) Relinquish their western DBS orbital/channel assignments at the following orbital locations: 148° W.L., 157° W.L., 166° W.L., and 175° W.L."
    - "Those acquiring DBS authorizations after January 19, 1996 must provide DBS service to Alaska and Hawaii where such service is technically feasible from the acquired orbital location."

These issues have been pending for two years in *In re Policies and Rules for the Direct Broadcast Satellite Service*, Notice of Proposed Rulemaking, IB Docket No. 98-21, 13 FCC Rcd 6907 (1998).

**4.**

**Letter from Herbert Marks and Bruce Olcott, Counsel to  
the State of Hawaii, IB Docket No. 98-21 (Jan. 11, 2002)**



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January 11, 2002

Commissioner Kevin Martin  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

**Re: DBS Service to Hawaii; IB Docket No. 98-21**

Dear Commissioner Martin:

As you requested during our meeting on December 20, 2001, please find attached two charts that provide comparisons regarding Direct Broadcast Satellite ("DBS") service in Hawaii. The charts provide a comparison of the programming packages that the DBS licensees provide in the mainland with the packages that are made available in Hawaii. The charts demonstrate that the DBS subscriber packages that are currently marketed in Hawaii are not comparable to the subscriber packages that are available in the 48 mainland states.

The first chart provides a comparison between Directv's Total Choice package, its major service offering to consumers in the mainland 48 states, and the two subscriber packages that Directv makes available in Hawaii. DirecTV's Total Choice package includes 78 cable programming channels for \$31.99 per month. In Hawaii, Directv offers Hawaii Choice Plus, which includes just 47 cable programming channels at \$29.99 per month, and Opcion Hawaii Plus, which includes 19 Spanish language channels at \$23.99 per month.

The differences between Directv's Total Choice package and the two Hawaiian packages are significant. Not available under either of the Hawaii packages are 44 programming channels, including such popular options as A&E Network, BET, Bloomberg Television, CNBC, CNN, CNN/Sports Illustrated, C-SPAN, all of the Discovery channels, ESPN, ESPN2, Headline News, The Health Network, TBS Superstation, Turner Classic Movies, USA Network, The Weather Channel, and WGN Superstation. In order to make up for the unavailability of these 44 channels, DirecTV offers 13 less popular channels in the Hawaii Choice Plus package and 19 Spanish-language channels in the Opcion Hawaii Plus package.

The second chart compares EchoStar's America's Top 150 package ("AT 150"), which is marketed only in the mainland 48 states, with EchoStar's America's Top 100 package ("AT 100"), which is marketed in both the mainland and in Hawaii. Because EchoStar customers in Hawaii are not offered EchoStar's popular AT 150 package, they do not receive 33 programming channels, including such channels as Biography, Bloomberg Television, CNN/Sports Illustrated,

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several Discovery channels, several Encore movie channels, FOX Movie Channel, FOX Sports World, Golf Channel, Hallmark Channel, Outdoor Channel, Outdoor Life, SoapNet, Style and VH1 Classic.

In summary, the current DBS licensees continue to provide inadequate and discriminatory service to the State, despite Commission rules mandating that DBS licensees must provide service to Hawaii that is generally comparable in content and quality to DBS service in the rest of the United States.<sup>1</sup> When making these rules in 1995, the Commission made clear that provision of full service to Alaska and Hawaii is required and that a licensee's failure to provide such full service would be a violation of Commission regulations.<sup>2</sup> The regulatory focus of the rule is *fairness*. Fairness in the context of DBS services includes at least comparable and non-discriminatory service to all states.

Congress also has made clear that service equity is a priority. For example, Section 151 of the Communications Act charges the Commission with ensuring citizens "rapid, efficient, Nation-wide, and world-wide wire and radio communication service."<sup>3</sup> Section 307 (b) directs the Commission to develop rules with the goal of providing "a fair, efficient, and equitable distribution of radio service" to all states.<sup>4</sup>

Importantly, the State is not requesting that DBS service in Hawaii be identical to the programming that is provided in other parts of the United States. The State simply believes that if a DBS operator markets the same subscriber packages in 48 mainland states, then the operator should also make those packages available in the remaining two states. The State's requested relief requires the least intervention by the FCC. The Commission need only mandate that the providers offer Hawaiians the same national programming packages that they offer to customers in every one of the 48 mainland states. Such an approach does not dictate what channels the provider should select for its national programming packages. The State's requested relief also releases the Commission from having to condone the claim of DBS licensees that the overtly discriminatory structure of their programming packages is somehow consistent with the public interest.

In resisting the Commission's regulations, Directv has argued that the State is misinterpreting the DBS geographic service requirements. Directv argues that the rule gives DBS licensees "flexibility" to avoid the provision of comparable service to Hawaii.<sup>5</sup> Directv

<sup>1</sup> See 47 C.F.R. § 100.53.

<sup>2</sup> See *In the Matter of Revision of Rules and Policies for the Direct Broadcast Satellite Service*, Report and Order, IB Docket No. 95-168, PP Docket No. 93-253, 11 FCC Rcd 9712, 9761 (1995).

<sup>3</sup> See 47 U.S.C. § 151.

<sup>4</sup> See 47 U.S.C. § 307 (b).

<sup>5</sup> See *In the Matter of Policies and Rules for the Direct Broadcast Satellite Service*, Directv Ex Parte, IB Docket No. 98-21 at 3 (filed July 20, 2001) ("Directv Ex Parte").

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has apparently exercised this “flexibility” in two major ways. First, it has persistently implemented business and system configuration decisions in blatant and knowing disregard of the Commission’s geographic service rules. Then, it has hidden behind such false pretenses and notified the Commission that it is providing service to Hawaii to the best of its ability.

Second, Directv uses other public interest objectives such as the provision of public interest and local broadcasting and advanced services as an excuse and as a shield to perpetuate inferior service to Hawaii. Directv has argued in other proceedings that its compliance with Section 100.53 is discretionary and can be balanced against other goals.<sup>6</sup> It claims that service to Hawaii is justifiably compromised when balancing all of its competing public interest obligations.

The Commission has already concluded, however, that “Directv’s decision to provide local-into-local service does not excuse Directv from its service obligations to Hawaii.”<sup>7</sup> For example, the Commission has already concluded that Congress intended for non-commercial programming to be offered “to all of a DBS provider’s subscribers” and cannot exclude “subscribers . . . in Alaska or Hawaii.”<sup>8</sup> In fact, nowhere does the Commission’s rules permit violation of Section 100.53 in the interest of meeting any other public interest objective.

The State strongly urges the Commission to promptly address the issue of ongoing discrimination by DBS licensees against residents in Hawaii in its upcoming Part 100 Order on DBS. The Commission has been considering the docket for over three years without resolution. Because of the lapse in time, the Commission needed to refresh the record, thus exacerbating the regulatory delay.<sup>9</sup>

Hawaii does not request “drastic marketplace intervention” as Directv would have the Commission believe.<sup>10</sup> Rather, the State asks that the Commission merely *reiterate* and *enforce* its current rules. That the DBS licensees may be inconvenienced by the adjustments they will need to make in order to comply with those rules should not be a deterrent to the necessary Commission action. The simple truth is that the DBS licensees have created their own technical and satellite system configuration problems by repeatedly failing to give Commission regulations proper consideration.

<sup>6</sup> See *In the Matter of Directv Enterprises, Inc. for Authority to Launch and Operate DIRECTV 4S (USABBS-13)*, Opposition of Directv, File No. S2430 SAT-LOA-20010518-00045 (Aug. 10, 2001).

<sup>7</sup> *In the Matter of Directv Enterprises Inc. for Authority to Launch and Operate a Direct Broadcast Satellite Service Space Station*, DA 01-2402, ¶ 12 (Oct. 26, 2001).

<sup>8</sup> See *In the Matter of American Distance Education Consortium Request for an Expedited Declaratory Ruling and Informal Complaint*, FCC 99-367, ¶¶ 10, 12 (Nov. 24, 1999) (concluding that EchoStar cannot provide all of its non-commercial programming solely to subscribers in the eastern United States using its orbital assignment at 61.5° W.L.).

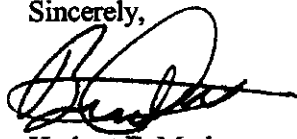
<sup>9</sup> See *The Commission Requests Further Comment in Part 100 Rulemaking Proceeding on Non-Conforming Use of Direct Broadcast Satellite Service Spectrum*, Public Notice, IB Docket No. 98-21 (rel. Dec. 8, 2000).

<sup>10</sup> See *Id.* at 1.

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Further, Directv exaggerates the efforts necessary to provide comparable service to Hawaii. It is possible for the DBS licensees to provide comparable service to Hawaii *without* repositioning satellites, *without* the need to alter every consumer receiver dish, *without* "double illumination" of Hawaii and the continental United States, and *without* substantial cost. Comparable service to Hawaii could be achieved simply by transitioning services provided to Hawaii from older satellites to newer ones. The two operators will make these improvements, however, only if the Commission makes clear that DBS licensees have an affirmative obligation to provide service that is uniformly comparable throughout the United States.

Sincerely,



Herbert E. Marks  
Bruce A. Olcott  
Counsel to the State of Hawaii

Attachments

cc: Chairman Michael Powell  
Commissioner Kathleen Q. Abernathy  
Commissioner Michael J. Copps  
Monica Shah Desai, Legal Advisor to Commissioner Martin  
Catherine Crutcher Bohigian, Legal Advisor to Commissioner Martin  
Peter Tenhula, Senior Legal Advisor for Chairman Michael Powell  
Paul Margie, Legal Advisor to Commissioner Copps  
Bryan Tramont, Senior Legal Advisor to Commissioner Abernathy  
Stacy Robinson, Legal Advisor to Commissioner Abernathy  
Linda Haller, Legal Advisor, International Bureau  
Christopher Murphy, Legal Advisory, International Bureau  
Rosalee Chiara, Deputy Chief, Satellite Policy Branch  
Secretary Magalie Roman Salas

### CHART 1

#### DirecTV: Total Choice Package Comparison with Hawaii Program Offerings

- Total Choice Package is the basic channel-programming package available from DirecTV for \$31.99/month for 78 basic channels. An additional 31 music channels and as many as 55 PPV channels for movies and events are accessible. Separate add-on packages for premium movie channels, such as from the HBO family of channels, are available at additional monthly cost that varies by the movie channel provider. These 30 premium movie channels are available as part of the Total Choice Platinum package for \$69.99/month.
- Two packages are available for subscribers in Hawaii: (1) Hawaii Choice Plus at \$21.99/month and Opción Hawaii Plus (same channel lineup as Hawaii Choice Plus with an additional 19 Spanish-language channels) at \$23.99/month. Both Hawaii packages provide 47 basic channels.
- Program charts as of December 26, 2001 and downloaded from DirecTV at <http://www.directv.com/packages/packagespages/0,1336,516,00.html>
- Any music channels, PPV movie, duplicative regional channel and programming guides are not included in this comparison.

<b>Total Choice Package, \$31.99/month</b>	<b>Hawaii Choice, Plus \$21.99/month</b>	<b>Opción Hawaii Plus, \$23.99/month</b>
A&E Network	<i>NO</i>	<i>NO</i>
All News Channel	<i>NO</i>	<i>NO</i>
American Movie Classics (AMC)	<b>X</b>	<b>X</b>
Animal Planet	<b>X</b>	<b>X</b>
BBC America	<i>NO</i>	<i>NO</i>
Black Entertainment Television (BET)	<i>NO</i>	<i>NO</i>
Bloomberg Television	<i>NO</i>	<i>NO</i>
Bravo	<b>X</b>	<b>X</b>
Cartoon Network	<i>NO</i>	<i>NO</i>
CNBC	<i>NO</i>	<i>NO</i>
CNN	<i>NO</i>	<i>NO</i>
CNNfn/CNN International	<i>NO</i>	<i>NO</i>
CNN/Sports Illustrated	<i>NO</i>	<i>NO</i>
Comedy Central	<b>X</b>	<b>X</b>
Country Music Television (CMT)	<i>NO</i>	<i>NO</i>



Court TV	<b>X</b>	<b>X</b>
C-SPAN	<b>NO</b>	<b>NO</b>
C-SPAN2	<b>X</b>	<b>X</b>
Discovery Channel	<b>NO</b>	<b>NO</b>
Discovery Health Channel	<b>NO</b>	<b>NO</b>
Disney Channel (West)	<b>X</b>	<b>X</b>
E! Entertainment Television	<b>X</b>	<b>X</b>
ESPN	<b>NO</b>	<b>NO</b>
ESPN2	<b>NO</b>	<b>NO</b>
ESPNEWS	<b>NO</b>	<b>NO</b>
ESPN Classic	<b>NO</b>	<b>NO</b>
Food Network	<b>X</b>	<b>X</b>
FOX Family Channel	<b>NO</b>	<b>NO</b>
FOX Movie Channel	<b>X</b>	<b>X</b>
FOX News Channel	<b>X</b>	<b>X</b>
FX	<b>X</b>	<b>X</b>
Galavision	<b>X</b>	<b>X</b>
Game Show Network	<b>NO</b>	<b>NO</b>
Hallmark Channel	<b>NO</b>	<b>NO</b>
Headline News	<b>NO</b>	<b>NO</b>
The Health Network	<b>NO</b>	<b>NO</b>
The History Channel	<b>X</b>	<b>X</b>
Home & Garden Television (HGTV)	<b>X</b>	<b>X</b>
Home Shopping Network	<b>X</b>	<b>X</b>
Independent Film Channel (IFC)	<b>NO</b>	<b>NO</b>
The Learning Channel (TLC)	<b>X</b>	<b>X</b>
Lifetime	<b>X</b>	<b>X</b>
Lifetime Movie Network	<b>NO</b>	<b>NO</b>

MSNBC	X	X
MTV	X	X
MTV2	X	X
MuchMusic	NO	NO
National Geographic Channel	NO	NO
The National Network	NO	NO
Newsworld International	NO	NO
Nickelodeon/Nick at Nite (West)	X	X
Noggin	X	X
Outdoor Life Network	NO	NO
Oxygen	X	X
PAX	X	X
PBS YOU	NO	NO
QVC	X	X
Regional Sports Network (in-market)	X	X
SCI FI Channel	X	X
ShopNBC	NO	NO
Speedvision	X	X
TBS Superstation	NO	NO
TechTV	NO	NO
TNT	NO	NO
Toon Disney	X	X
Travel Channel	X	X
Trinity Broadcasting Network (TBN)	NO	NO
TRIO	NO	NO
Turner Classic Movies (TCM)	NO	NO
TV Land	X	X
Univision	X	X

USA Network	<b>NO</b>	<b>NO</b>
VH1	<b>X</b>	<b>X</b>
WE: Women's Entertainment	<b>NO</b>	<b>NO</b>
The Weather Channel	<b>NO</b>	<b>NO</b>
WGN Superstation	<b>NO</b>	<b>NO</b>
Word Network	<b>NO</b>	<b>NO</b>
WorldLink TV	<b>NO</b>	<b>NO</b>

- Hawaii Choice Plus subscribers can access 13 other channels not available in the Total Choice package for mainland US:
  - Biography
  - Boomerang
  - Discovery Kids
  - Do-It-Yourself Network
  - Galavision
  - Golf Channel
  - Odyssey
  - PBS Kids
  - Soapnet
  - STARZ! Theater East
  - STARZ! West
  - Univision
  - ValueVision
- The Opción Hawaii Plus package also provides an additional 19 Spanish-language channels in Hawaii (not listed above), which are not available in the Total Choice package for mainland US without an additional charge.
- No local channels are available under any of DirecTV's offerings, whether in the mainland United States or Hawaii, without additional charge.
- There are also up to 19 premium movie channels available to Hawaii subscribers from HBO and Showtime on an à la carte basis.
- DirecTV's stand-alone sports packages (i.e., NBA, MLB, NFL, etc.) are not available in Hawaii.

## CHART 2

### America's Top 150 (as available in mainland US at \$39.99/month)

- Comparison between America's Top (AT) 150 (available only in mainland United States ) and AT 100 (as available in mainland US and available in Hawaii).
- AT 150 offers 129 basic channels. AT 100 offers 96 basic channels. Music channels and PPV movie channels are also accessible. Neither package includes any local channels.
- Programming lineups as of December 26, 2001 downloaded from EchoStar promotional website at <http://www.dishnetwork.com/content/programming/packages/index.shtml>
- Music channels, PPV movie, and multiple regional sports network available depending on the subscriber's location, duplicative regional channels, and programming guides are deleted from the comparison.

AT 150 CHANNEL	CATEGORY	AVAIL AT 100	NETWORK	AT 150 CHANNEL	AVAIL AT 100
<u>America's Collectibles Network</u>	SHOPPING	X	<u>American Movie Classics</u>	MOVIES	X
<u>Angel One (Sky Angel 100 Ministries)</u>	FAMILY	X	<u>Animal Planet</u>	LEARNING	X
			<u>Arts &amp; Entertainment</u>	VARIETY	X
<u>BBC America</u>	VARIETY	X	<u>BYUTV</u>	LEARNING	X
<u>Beauty &amp; Fashion Channel</u>	SHOPPING	X	<u>Biography</u>	INFORMATIONAL	NO
<u>Black Entertainment Television</u>	VARIETY	X	<u>Bloomberg</u>	NEWS	NO
<u>Boomerang</u>	FAMILY	NO	<u>Bravo</u>	MOVIES	X
<u>C-SPAN</u>	NEWS/INFO	X	<u>C-SPAN2</u>	NEWS/INFO	X
<u>CNBC</u>	NEWS/INFO	X	<u>CNN Financial/CNN International</u>	NEWS/INFO	X
<u>CNN/Sports Illustrated</u>	SPORTS	NO	<u>Cable News Network</u>	NEWS/INFO	X
<u>California Community Colleges Satellite Network</u>	EDUCATIONAL	X	<u>Cartoon Network, The</u>	FAMILY	X
<u>ComCast SportsNet</u>	SPORTS	X	<u>Comedy Central</u>	VARIETY	X
<u>Country Music Television</u>	MUSIC	X	<u>Court TV</u>	NEWS/INFO	X
<u>DELL</u>	LEARNING	X	<u>Discovery Channel, The</u>	LEARNING	X
<u>Discovery Civilization</u>	LEARNING	NO	<u>Discovery Health</u>	LEARNING	X

<u>Discovery Home &amp; Leisure</u>	LEARNING	NO	<u>Discovery Kids</u>	FAMILY	NO
<u>Discovery Science</u>	LEARNING	NO	<u>Discovery Wings</u>	SPORTS	NO
<u>Disney Channel (West)</u>	FAMILY	X	<u>Do It Yourself (DIY)</u>	LEARNING	NO
<u>E! Entertainment Television</u>	VARIETY	X	<u>ESPN</u>	SPORTS	X
<u>ESPN Alternate</u>	SPORTS	X	<u>ESPN Classic</u>	SPORTS	X
<u>ESPN2</u>	SPORTS	X	<u>ESPN2 Alternate</u>	SPORTS	X
<u>ESPNEWS</u>	SPORTS	X	<u>Empire Sports</u>	SPORTS	X
<u>Encore (West)</u>	MOVIES	NO	<u>Encore Action/Adventure</u>	MOVIES	NO
<u>Encore Love Stories</u>	MOVIES	NO	<u>Encore Mysteries</u>	MOVIES	NO
<u>Encore True Stories</u>	MOVIES	NO	<u>Encore WAM/America's Kidz Network</u>	FAMILY	NO
<u>Encore Westerns</u>	MOVIES	NO	<u>Eternal Word Television Network</u>	FAMILY	X
<u>F/X</u>	VARIETY	X	<u>FOX Family Channel</u>	FAMILY	X
<u>FOX Movie Channel</u>	MOVIES	NO	<u>FOX News Channel</u>	NEWS/INFO	X
<u>FOX Regional Sports Network</u>	SPORTS	X	<u>Food Network</u>	LEARNING	X
<u>FOX Sports World</u>	SPORTS	NO	<u>Free Speech TV</u>	LEARNING	X
<u>Galavision</u>	SPANISH	X	<u>Game Show Network</u>	VARIETY	X
<u>Golf Channel, The</u>	SPORTS	NO	<u>Great American Country</u>	MUSIC	NO
<u>HITN</u>	LEARNING	X	<u>Hallmark Channel</u>	FAMILY	NO
<u>Headline News Network</u>	NEWS/INFO	X	<u>History Channel International</u>	LEARNING	NO
<u>History Channel, The</u>	LEARNING	X	<u>Home &amp; Garden Television</u>	LEARNING	X
<u>Home Shopping Network, The</u>	VARIETY	X	<u>ISHOP</u>	SHOPPING	X
<u>Lifetime</u>	FAMILY	X	<u>Lifetime Movie Network</u>	MOVIES	X
<u>LinkMedia</u>	LEARNING	X	<u>MSNBC</u>	NEWS/INFO	X
<u>Madison Square Garden</u>	SPORTS	X	<u>Men's Channel</u>	SHOPPING	X
<u>Movie Channel, The (West)</u>	MOVIES	NO	<u>Music Television</u>	MUSIC	X
<u>Music Television 2</u>	MUSIC	X	<u>NASA</u>	NEWS/INFO	X

<u>Nickelodeon / Nick at Nite (West)</u>	FAMILY	X	<u>Nickelodeon Games &amp; Sports</u>	FAMILY	NO
<u>Noggin</u>	FAMILY	X	<u>Northern Arizona University / University House</u>	LEARNING	X
<u>Outdoor Channel, The</u>	SPORTS	NO	<u>Outdoor Life</u>	SPORTS	NO
<u>PAX TV</u>	FAMILY	X	<u>PBS YOU</u>	LEARNING	X
<u>QVC Shopping Network</u>	VARIETY	X	<u>RFDTV</u>	INFORMATIONAL	X
<u>Research Channel</u>	EVENTS	X	<u>Romance Classics / Independent Film Channel</u>	MOVIES	X
<u>Sci-Fi Channel, The</u>	FAMILY	X	<u>Shop At Home</u>	SHOPPING	X
<u>SoapNet</u>	FAMILY	NO	<u>Speedvision</u>	SPORTS	NO
<u>Sports Alternate 1</u>	SPORTS	X	<u>Sports Alternate 2</u>	SPORTS	X
<u>Sports Alternate 3</u>	SPORTS	X	<u>Style</u>	VARIETY	NO
<u>Sunshine Network</u>	SPORTS	X	<u>TMC XTRA West</u>	MOVIES	NO
<u>TV Games Network</u>	SPORTS	X	<u>TV Land</u>	VARIETY	X
<u>TechTV</u>	LEARNING	X	<u>The Learning Channel</u>	LEARNING	X
<u>The National Network</u>	VARIETY	X	<u>Toon Disney</u>	FAMILY	X
<u>Travel Channel, The</u>	LEARNING	X	<u>Trinity Broadcasting Network</u>	FAMILY	X
<u>Turner Broadcast System</u>	VARIETY	X	<u>Turner Classic Movies</u>	MOVIES	X
<u>Turner Network Television</u>	VARIETY	X	<u>Turner South</u>	SPORTS	X
<u>USA Network</u>	VARIETY	X	<u>University of California</u>	LEARNING	X
<u>University of Washington TV</u>	EDUCATION AL	X	<u>Univision</u>	SPANISH	X
<u>VH1</u>	MUSIC	X	<u>VH1 Classic</u>	MUSIC	NO
<u>ValueVision</u>	SHOPPING	X	<u>WGN</u>	VARIETY	X
<u>Weather Channel, The</u>	NEWS/INFO	X	<u>Wisdom Television</u>	VARIETY	NO
<u>Good Samaritan Network</u>	LEARNING	X	<u>ISHOP</u>	SHOPPING	X
<u>Panhandle Area Educational Consortium</u>	EDUCATION AL	X	<u>Shop At Home</u>	SHOPPING	X

- **Summary -- AT 150 Channels not available on AT 100 (33 channels):**
  - Biography
  - Bloomberg
  - Boomerang
  - CNN/Sports Illustrated
  - Discovery Civilization
  - Discovery Home & Leisure
  - Discovery Kids
  - Discovery Science
  - Do It Yourself (DIY)
  - Encore (West)
  - Encore Action/Adventure
  - Encore Love Stories
  - Encore Mysteries
  - Encore True Stories
  - Encore WAM/America's Kidz Network
  - Encore Westerns
  - FOX Movie Channel
  - FOX Sports World
  - The Golf Channel
  - Great American Country
  - Hallmark Channel
  - History Channel International
  - The Movie Channel (West)
  - Nickelodeon Games & Sports
  - The Outdoor Channel
  - Outdoor Life
  - SoapNet
  - Speedvision
  - Style
  - TMC XTRA West
  - VHI Classic
  - Wisdom Television
  
- **America's Everything Pak (available in mainland US at \$69.99/month; not available in Hawaii) includes:**
  - America's Top 150 and all four premium movie packages (SHOWTIME UNLIMITED, HBO The Works, Multimax from Cinemax, and Starz Encore Super Pak) of 29 channels`

**5.**

**State of Alaska Comments, CS Docket No. 01-248 (filed  
Feb. 4, 2002).**



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February 4, 2002

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**BY HAND**

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
236 Massachusetts Avenue, N.E.  
Suite 110  
Washington, DC 20002

Re: Application of EchoStar Communications Corporation,  
General Motors Corporation, Hughes Electronics  
Corporation and EchoStar Communications Corporation,  
For Authority to Transfer Control, CS Docket No. 01-348

Dear Mr. Caton:

Transmitted on behalf of the State of Alaska are an original and 4 copies of the State of Alaska's Comments for filing in the above-referenced docket. As shown on the Certificate of Service, copies are being sent via e-mail to other Commission staff, as set forth in the Public Notice.

In the event there are any questions concerning this matter, please communicate with the undersigned.

Very truly yours,

  
Robert M. Halperin

Enclosures

cc: Linda Senecal (by e-mail)

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List A B C D E

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of )  
Application of )  
ECHOSTAR COMMUNICATIONS )  
CORPORATION, GENERAL )  
MOTORS CORPORATION, )  
HUGHES ELECTRONICS )  
CORPORATION, )  
Transferors, )  
And )  
ECHOSTAR COMMUNICATIONS )  
CORPORATION, )  
Transferee, )  
For Authority to Transfer Control. )

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

CS Docket No. 01-348

COMMENTS OF THE STATE OF ALASKA

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February 4, 2002

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## SUMMARY

The Commission should give careful consideration to critical competition and other public interest issues raised by this application. Commission precedent provides that the application be granted only if the applicants can establish that (1) the transaction will enhance competition; (2) the claimed public interest benefits are demonstrable, verifiable, and merger-specific; and (3) the transaction will promote competition in the distribution of diverse sources of video programming. If these requirements are not satisfied, the Commission should either impose conditions that address and correct adverse competitive or public interest effects or deny the application.

It is not clear, on the face of this application, that these requirements have been satisfied. For example, the merger appears to reduce competition in video distribution services, particularly in rural areas that are not served by a cable television system. Although the applicants' promise of geographically uniform pricing may address potential pricing concerns, there are no assurances that rural residents of Alaska (and perhaps other states) will receive the same quantity and quality of programming and other services (*e.g.*, customer service) as those residing in areas where there is greater competition.

The merger also appears to reduce competition in broadband services significantly, particularly in Alaska. Because of sparse population, harsh geographic conditions and other factors, alternative forms of broadband service (cable modem and DSL) are not available in large parts of rural Alaska. DBS, therefore, may provide the only source of broadband services to small businesses

and consumers in these areas. Each of the merging parties currently offers broadband services and it appears that each planned on offering its own next generation broadband service. Although the merging parties now claim that each of them could not afford to launch next generation broadband in the absence of the merger, no specific evidence is provided to justify that claim. If the Commission agrees that the merger would reduce competition in broadband services in Alaska, the State requests that the Commission impose the conditions recommended in these comments to address that problem.

The State acknowledges the public interest benefits the applicants identify as they relate to Alaska. It is not clear, however, that these benefits are demonstrable, verifiable, and merger-specific. The State requests that the Commission conduct a thorough assessment (including a review of the applicants' internal documents) to determine whether these public interest benefits are cognizable under Commission precedent.

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Application of	)	
	)	
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MOTORS CORPORATION,	)	
HUGHES ELECTRONICS	)	
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And	)	
	)	
ECHOSTAR COMMUNICATIONS	)	
CORPORATION,	)	
	)	
Transferee,	)	
	)	
For Authority to Transfer Control.	)	

**COMMENTS OF THE STATE OF ALASKA**

The Commission should give careful consideration to critical competition and other public interest issues raised by the application of Echostar Communications Corporation ("Echostar"), General Motors Corporation ("GM"), and Hughes Electronics Corporation ("Hughes") for Commission approval of the transfer of control of Hughes from GM to Echostar.

As demonstrated below, it is not clear on the basis of the application itself that the proposed transaction satisfies the requirements the Commission has established in prior cases dealing with mergers or acquisitions and associated license transfers or assignments. The Commission should carefully review the companies' internal documents and make other inquiries to determine whether these requirements are, in fact, satisfied. Among other things, the application raises serious questions concerning whether the proposed merger will create adverse competitive and public interest effects in broadband services in remote rural areas, particularly in Alaska.

**I. BACKGROUND – THE MERGER, ITS CLAIMED BENEFITS AND THE STANDARD FOR COMMISSION APPROVAL**

The two major forms of delivery of multiple channels of video programming to consumers across the nation are cable television and DBS.<sup>1</sup> This proposed transfer of control would result in the consolidation of the only two major DBS service providers in the nation – Echostar and DIRECTV.

In addition, Echostar and DIRECTV both offer some form of broadband Internet access service (either by themselves or in conjunction with affiliated companies). They are increasingly being considered as competitors to cable modem

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<sup>1</sup> *In re Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, CD Docket No. 01-129, ¶¶ 5-8 (rel. Jan. 14, 2002). In its *Eighth Annual Report on Competition in the Market for Delivery of Video Programming*, the Commission found that while cable subscribership continues to grow, the “growth of non-cable MPVD subscribers continues to be primarily due to the growth of DBS.” *Id.* at ¶ 8. From June 2000 to June 2001, the number of DBS subscribers grew “nearly two and a half times the cable subscriber growth rate.” *Id.* at ¶ 7.

broadband services offered by cable television companies and digital subscriber line (DSL) service offered by telephone companies. Echostar and DIRECTV have plans to launch and operate a new generation of DBS broadband service, such as DIRECTV's planned SPACEWAY service. App. at 14.

The applicants generally claim that the transaction will result in many public interest benefits and that they are willing to make certain commitments to protect competition in rural areas. Among the public interest benefits the parties claim are (1) the ability to provide better service to Americans living in rural areas, Alaska, and Hawaii (*id.* at 33-34); (2) the ability to use spectrum more efficiently so that the post-merger firm will be able to provide "local into local" programming in many more areas of the country than each firm could do by itself without the merger (*id.* at 28-29); and (3) the ability to compete more vigorously against cable television services, including the provision of broadband services (*id.* at 30-33).

In accordance with accepted principles of antitrust law and Commission policy and precedent, the claimed public interest benefits of this transaction must be analyzed very carefully.<sup>2</sup> "[T]he Communications Act requires the Commission to make an independent public interest determination, which includes evaluating public interest benefits or harms of the merger's likely effect on future competition. To find that a merger is in the public interest, therefore, the Commission must 'be

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<sup>2</sup> *In re Applications of Ameritech Corp., Transferor, and SBC Communications., Transferee, For Consent to Transfer Control*, 14 FCC Rcd. 14712, at 14825 ¶ 256 (1999) ("SBC-Ameritech Order").



convinced that it will enhance competition.”<sup>3</sup> Commission precedent further requires that the parties’ asserted public interest benefits be “achievable only as a result of the merger [and] are sufficiently likely and verifiable.”<sup>4</sup> The Commission has also recognized its congressional mandate to ensure that proposed transactions further the statutory goal of “promot[ing] competition in the delivery of diverse sources of video programming.”<sup>5</sup> Finally, the “Applicants bear the burden of proving that the transfer will advance the public interest.”<sup>6</sup>

## II. DOES THE TRANSACTION ENHANCE COMPETITION?

It is by no means clear that the proposed transaction will enhance competition in either video or broadband services.

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<sup>3</sup> *Applications to Consent to the Transfer of Control of Licenses and Section 214 Authorizations by Time Warner Inc. and America Online, Inc. Transferors, to AOL Time Warner, Inc., Transferee*, 16 FCC Rcd. 6547, at 6555, ¶ 21 (2001) (“AOL-Time Warner Order”) (quoting *In re Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from MediaOne Group, Inc., Transferor, To AT&T Corp., Transferee*, 15 FCC Rcd. 9816, at 9820-21, ¶ 9 (2000) (“AT&T-MediaOne Order”); *SBC-Ameritech Order*, 14 FCC Rcd. at 14737, ¶ 48).

<sup>4</sup> *SBC-Ameritech Order*, 14 FCC Rcd. 14825 at ¶ 255.

<sup>5</sup> 47 U.S.C. § 532(c); *AOL-Time Warner Order*, 16 FCC Rcd. at 6555, ¶ 22.

<sup>6</sup> *Id.* at 6554, ¶ 19 (citing *In re Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorization from Tele-Communications, Inc., Transferor To AT&T Corp., Transferee*, 14 FCC Rcd. 3160, at 3169-70, ¶ 15 (1999) (“AT&T-TCI Order”); *In re Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc.*, 13 FCC Rcd. 18025, at 18031, ¶ 10 n.33 (1998)).